SUPREME COURT OF THE UNITED STATES.

No. 343.—October Term, 1926.

Interstate Busses Corporation, Appellant, *vs.* Holyoke Street Railway Company et al.	Appeal from the United States District Court for the District of Massachusetts.

[January 3, 1927.]

Mr. Justice Butler delivered the opinion of the Court.

This suit was brought by appellant against the Holyoke Street Railway Company, its president and general manager, police and prosecuting officers of a number of cities and towns, the chief of the state police and the district attorneys of the Western and Northern Districts of Massachusetts. Its purpose is to restrain the enforcement of a state statute relating to common carriers of passengers by motor vehicles as in conflict with the commerce clause of the Constitution of the United States and with the due process clause of the Fourteenth Amendment. The case was heard before a court of three judges (§ 266, Judicial Code) on an agreed statement of facts; and a final decree dismissing the complaint was entered.

Sections 45, 48A and 49 of c. 159, General Laws, as amended by c. 280, Acts of 1925, contain the provisions attacked: No person shall operate a motor vehicle upon a public way in any city or town for the carriage of passengers for hire so as to afford a means of transportation similar to that afforded by a railway company by indiscriminately receiving and discharging passengers along the route on which the vehicle is operated, or as a business between fixed and regular termini, without first obtaining a license. The licensing authority in a city is its council, in a town is its selectmen; and, as to public ways under its control, is the metropolitan district commission. No person shall operate a motor vehicle under such license unless he has also obtained from the Department of Public Utilities a certificate that public convenience and necessity require such opera-

tion. Anyone operating under a license from local authority and a certificate from the department is declared to be a common carrier and subject to regulation as such. Violations of §§ 45-48 or of any order, rule or regulation made under them are punishable by fine or imprisonment or both. And the Act gives to the Supreme Judicial and Superior Courts jurisdiction in equity to restrain any violation upon petition of the department, any licensing authority, ten citizens of a city or town affected by the violation, or any interested party. Neither license nor certificate is required in respect of such carriage as may be exclusively interstate.

The material facts stipulated are: For many years, the appellee Holyoke Street Railway Company has been a common carrier of passengers by street railway in Massachusetts through Holyoke, South Hadley, Granby, Amherst and into Sunderland. Appellant is engaged in the business of transporting passengers for hire by motor vehicle, and operates busses between Hartford, Connecticut, and Greenfield, Massachusetts. It has operated its busses between Hartford and Springfield since December 1, 1924, and north of Springfield to Greenfield since about December 15, 1925. Its route in Massachusetts passes through Springfield, West Springfield, Holyoke, Granby, Amherst, Sunderland, Deerfield and Greenfield. With certain exceptions not here material, all its busses run the whole distance between Hartford and Greenfield. It transports persons from one State into the other, and also those whose journeys begin and end in Massachusetts. Both classes of passengers, intrastate and interstate, are carried in the same vehicles. Intrastate passengers constitute a very substantial part of the whole number carried in Massachusetts. Appellant maintains an office and garage at Springfield and advertises its route and rates. The busses are operated between fixed termini in Massachusetts. They operate regularly on public ways parallel to and alongside the tracks of the street railway company and afford means of transportation similar to those furnished by that company. They stop regularly and also on signal to receive and discharge passengers. The operation of the busses in competition with the street railway has resulted in substantial loss to the latter. Appellant has not obtained a license from any of the cities or towns served by the street railway company. And that company, its president and counsel, have caused plaintiff's employees to be

arrested and prosecuted and intend to continue to prosecute them for operating without obtaining the licenses and certificate required by the statute.

The statutory provisions in question have been sustained by the highest court of Massachusetts. *New York, N. H. & H. Railroad* v. *Deister*, 253 Mass. 178; *Barrows* v. *Farnum's Stage Lines*, — Mass. —; *Boston & M. R. R.* v. *Cate*, — Mass. —; *Boston & M. R. R.* v. *Hart*, — Mass. —; *Commonwealth* v. *Potter*, — Mass. —. And these decisions were followed by the district court in this case.

Appellant's principal contention is that the Act contravenes the commerce clause. If as applied it directly interferes with or burdens appellant's interstate commerce, it cannot be sustained regardless of the purpose for which it was passed. See *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189, 199; *Real Silk Mills* v. *Portland*, 268 U. S. 325, 336; *Colorado* v. *United States*, 271 U. S. 153, 163; *Di Santo* v. *Pennsylvania*, — U. S. —. The Act existed in some form before interstate transportation of passengers for hire by motor vehicle was undertaken. Its purpose is to regulate local and intrastate affairs. *Barrows* v. *Farnum's Stage Lines, supra.* No licenses from local authorities or certificate of public convenience and necessity is required in respect of transportation that is exclusively interstate. Cf. *Buck* v. *Kuykendall*, 267 U. S. 307; *Bush Co.* v. *Maloy*, 267 U. S. 317. The burden is upon appellant to show that enforcement of the Act operates to prejudice interstate carriage of passengers. The stipulated facts do not so indicate. The threatened enforcement is to prevent appellant from carrying intrastate passengers without license over that part of its route which is parallel to the street railway. Its right to use the highways between Springfield and Hartford is not in controversy. While it appears that in Massachusetts both classes of passengers are carried in the same vehicles, it is not shown what part of the total number are intrastate or interstate. The record contains no information as to the number of persons, if any, travelling in interstate commerce on appellant's busses over the part of the route competing with the street railway. It is not shown that the two classes of business are so commingled that the separation of one from the other is not reasonably practicable or that appellant's interstate passengers may not be carried efficiently and economically in busses used exclusively for that purpose or that appellant's interstate business is dependent in any degree upon the local business in question. Ap-

pellant may not evade the Act by the mere linking of its intrastate transportation to its interstate or by the unnecessary transportation of both classes by means of the same instrumentalities and employees. The appellant relies on *Western Union Tel. Co.* v. *Kansas,* 216 U. S. 1; and *Pullman Co.* v. *Kansas,* 216 U. S. 56. But there the State was using its authority as a means to accomplish a result beyond its constitutional power.

There is no support for the contention that the enforcement of the Act deprives it of its property without due process of law. Undoubtedly, the State has power in the public interest reasonably to control and regulate the use of its highways so long as it does not directly burden or interfere with interstate commerce. *Packard* v. *Banton,* 264 U. S. 140, 144; *Kane* v. *New Jersey,* 242 U. S. 160; *Hendrick* v. *Maryland,* 235 U. S. 610. Cf. *Opinion of the Justices,* 251 Mass. 594, 596. The terms of the Act are not arbitrary or unreasonable. Appellant has not applied for and does not show that it is entitled to have a license from the local authorities or a certificate of public necessity and convenience from the department. Plainly, it has no standing to attack the validity of the statute as a violation of the due process clause.

Decree affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.